

Notice of Allowability

Application No.

09/826,608

Examiner

Bryce P. Bonzo

Applicant(s)

HAMILTON II ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Appeal Brief of 4/14/05.
2. ☒ The allowed claim(s) is/are 1,2,4,5,8,9,11,12,15,16 and 18.
3. ☒ The drawings filed on 05 April 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413), Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

REASONS FOR ALLOWANCE

Claims 1, 2, 4, 5, 8, 9, 11, 12, 15, 16 and 18 are now allowed.

The arguments made by Applicant in the Appeal Brief filed April 14th, 2005 have been found persuasive as outlined in detail below to the degree the claims are hereby allowed. These reasons for Allowance are required due to the extraordinary nature of Allowance after the submission of an Appeal Brief without the Applicant being reviewed by the Board of patent Appeals to maintain a clear prosecution history.

First, as to Applicant's arguments regarding the interpretation of "user environment data", the Examiner accepts the Applicant's reference of the specification at page 16, line 13-16 as a non-standard definition of user environment, moving away from a broader reasonable scope used by the Examiner during the prosecution of the application. Applicant has clearly stated that if the USER does not modify a system configuration, then it is NOT to be considered part of the user environment. This is drawn from Applicant's own arguments on page 16, lines 1-10, Applicant explicitly acknowledges that McGill backs up not only the operation system, but additionally the system configuration files. McGill does not explicitly disclose the USER has modified the configuration, only that a configuration exists for the user and subsequently is backed up.

Second, Applicant has argued that Maffezzoni fails to disclose collecting user environment data, specifically a printer definition, a network interface, a user password,

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and license information. While Maffezzoni does disclose a number of user environment items (Figure 5F: My Documents Folder, the Recycled Bin, the ScanLAN folder, Netscape Communicator), Maffezzoni does not explicitly disclose within the body written description the above four cited elements in view of Applicant's strict definition of user environment data.

- While ScanLAN and Netscape are network interfaces used for different network protocols, Maffezzoni never explicitly discloses the changes to these two programs are made by the USER. Maffezzoni will back up them regardless of user interaction.
- While Office and Adobe both generate printer definitions, and all contents of the Office and Adobe folders are backed up, which includes the printer definitions, there is no indication that the USER, and not some other authority such as an IT staff member or a default manufacturer setting, generated the printer definition.
- While Office and Windows both require a license to operate, Applicant does not concede this fact. As Maffezzoni is concerned with the legitimate backing up of properly licensed software, Maffezzoni does not describe Windows and Office versions which have been hacked. Furthermore the Examiner concedes that in Maffezzoni the license information as Applicant has redefined the term user environment, licensing the inherent licensing data of Maffezzoni is not necessarily user environment data. For instance, the optimal environment for the practicing of Maffezzoni's disclosure is a

large company or government agency running legitimate licensed versions of Office and Windows which are licensed by the seat (in bulk) from Microsoft. As such this cannot constitute user environment data as the user has no control over it.

- While Maffezzoni does disclose the use of email which does require passwords, Maffezzoni does not explicitly back up the passwords themselves or that a user ever changed them after being assigned them. The Examiner acknowledges the storing the passwords is not inherent to using email, as the storing of passwords on a computer is inherently insecure.

The remaining arguments presented in the Appeal Brief of April 14th, 2005 were reviewed, understood and found insufficient to require Allowance to Issue by the Examiner. However, as Applicant provided the unique and non-obvious combination of the above four elements, which could not be found explicitly in the prior art after a reasonable search, these claims are Allowable.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryce P. Bonzo whose telephone number is (571)272-3655. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571)272-3645. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Bryce P Bonzo
Primary Examiner
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